

Claimant alleges accidental injuries to his low back on January 8, 1994; January 28, 1994; and April 20, 1994, while performing work-related duties for the respondent. He was

employed by the respondent on these dates as a troubleshooter, taking care of cow herds, farming, buying seed and checking oil fields. Respondent, Shaw Enterprises, Inc., is owned by the claimant's father, George A. Shaw. Claimant claims that on January 8, 1994, he wrenched his low back while putting up a barricade around an oil jack. Claimant makes a second claim of injury to his low back on January 28, 1994, when he opened a gate and the hinges broke off, pulling him down to the ground. A third claim is made for an injury that occurred on April 20, 1994, as he was moving some pipe panels with his father and the panels shifted, causing his back to go out on him. After this accident, the claimant went down to the ground and experienced shooting pain down both legs. The claimant was able to return to work after the first two accidents but, as of the date of the Preliminary Hearing on January 25, 1995, he had not returned to work after the April 1994 accident. All three of the accidents were witnessed by the claimant's father.

The respondent's insurance carrier was not notified of any of the accidents until May 5, 1994, when only the April 20, 1994, accident was reported. Claimant's father's explanation for not reporting the other accidents at that time was that until the April 1994 accident the claimant had continued to work and since he had had previous back problems he wanted to see if the claimant needed any medical treatment before reporting the accidents. However, he finally realized after the April 20, 1994 accident, that the claimant was in need of medical treatment and he therefore reported the accident to the workers compensation insurance carrier. Claimant also did not notify the insurance carrier of the alleged accidents that occurred in January 1994 until after the insurance carrier denied the April 20, 1994 claim. Claimant's explanation for not reporting the January of 1994 accidents was that he was able to continue working and following the April 1994 accident he could not work.

The claimant had two prior low back surgeries due to injuries. He had disc removal at L5-S1 in June 1987, and another disc removal at L5-S1 in October 1988, performed in Wichita, Kansas. A third surgery was performed on the claimant in July 1989, by Dr. William L. Dillon of Parsons, Kansas, to remove scar tissue and repair recurrent disc herniation because of developed recurrent left leg pain.

Dr. Dillon continued to treat the claimant after the 1989 surgery for ongoing low back problems. Claimant was regularly obtaining pain medication from Dr. Dillon as of the date of Preliminary Hearing of January 25, 1995. In February of 1993, Dr. Dillon's medical notes indicate that the claimant again strained his low back, causing him numbness and pain in his left leg. From June 1993 until June 8, 1994, the date of claimant's fourth back surgery allegedly due to the 1994 work-related accidents, Dr. Dillon treated the claimant conservatively by prescribing pain medication, Medrol Dose Pack, and epidural injections. On February 8, 1994, Dr. Dillon ordered a CT scan and myelogram, as claimant's left leg pain had not responded to the epidural injections. These tests showed spinal stenosis between L2-L5 and asymmetry noted about the nerve root at L5-S1 on the left side. Finally, during a visit on April 26, 1994, the claimant's left leg pain was worse and he was simply living on pain pills and could not work at all. At that time, Dr. Dillon scheduled surgery for June 8, 1994. On that date a decompression laminectomy and fusion at L5-S1 was performed.

Claimant contends that he notified Dr. Dillon by telephone and during office visits of his January and April 1994 accidents. Claimant also contends that he told Dr. Dillon's physician's assistant about the accidents prior to the June 8, 1994 surgery. However, Dr. Dillon testified that he does not recall the claimant telling him either during any of his

telephone conversations or any of his office visits that he re-injured his low back in January 1994 or April 1994. Dr. Dillon's medical records, including a history taken by his physician assistant prior to claimant's surgery, do not indicate that the claimant claimed he re-injured his back while working for respondent. In fact, Dr. Dillon concludes that the decompression surgery that he performed on June 8, 1994, would have been performed based on the claimant's continuing problems that he experienced from his low back strain that occurred in February 1993, regardless of intervening injuries.

The Appeals Board finds, after a review of the preliminary record, that the claimant has failed to prove that it is more probably true than not that he suffered work-related injuries in January 1994 while working for the respondent. An accident did most likely occur on April 20, 1994, as described by the claimant but the medical evidence indicates such accident only temporarily aggravated the claimant's low back condition. Claimant's low back condition, by this time, had progressed from a strain that occurred in February 1993 to a point that decompression surgery was already needed. No credible evidence was produced by the claimant through Dr. Dillon's testimony or his medical records that claimant's alleged accidents had a causal connection to the surgery performed on June 8, 1994. However, having found a temporary aggravation because of the April 20, 1994 accident, the Appeals Board finds that temporary total disability weekly benefits should be awarded from April 21, 1994 to the date of surgery June 8, 1994.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl, dated January 31, 1995, is reversed and the claimant is denied benefits against the respondent and its insurance carrier for alleged accidental injuries occurring on January 8, 1994 and January 28, 1994. As a result of the April 20, 1994 accident, temporary total disability weekly benefits only are awarded from April 21, 1994 to June 8, 1994.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael Hull, Chanute, KS
Leigh C. Hudson, Fort Scott, KS
Derek R. Chappell, Ottawa, KS

Shannon S. Krysl, Administrative Law Judge
George Gomez, Director